INTERNATIONAL CRIMINAL COURT

Article 98

Agreement between the
UNITED STATES OF AMERICA
and GABON

Effected by Exchange of Notes at Libreville
February 26 and April 15, 2003

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

GABON

International Criminal Court: Article 98

Agreement effected by exchange of notes at Libreville
February 26 and April 15, 2003;
Entered into force April 15, 2003.

EMBASSY OF THE
UNITED STATES OF AMERICA

No. 017

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs and Cooperation of the Republic of Gabon, and refers to recent discussions between representatives of the Government of the United States of America and the Government of the Republic of Gabon regarding the surrender of persons to the International Criminal Court.

- Reaffirming the importance of bringing to justice those who commit genocide, crimes against humanity and war crimes,

- Recalling that the Rome Statute of the International Criminal Court done at Rome on July 17, 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court is intended to complement and not supplant national criminal jurisdiction,

- Considering that the Government of the United States of America and the Government of the Republic of Gabon have each expressed their intention to investigate and to prosecute where appropriate acts within the jurisdiction of the International Criminal Court alleged to have been committed by their officials, employees, military personnel or other nationals,

- Bearing in mind Article 98 of the Rome Statute,

- The Embassy proposes the following agreement:

    1. For purposes of this agreement, "persons" are current or former Government officials, employees (including contractors), or military personnel or nationals of one Party.

    2. Persons of one Party present in the territory of the other shall not, absent the express consent of the first Party,

        (a) be surrendered or transferred by any means to the International Criminal Court for any purpose, or

        (b) be surrendered or transferred by any means to any other entity or third country, or expelled to a third country, for the purpose of surrender to or transfer to the International Criminal Court.

3. When the United States extradites, surrenders, or otherwise transfers a person of Gabon to a third country, the United States will not agree to the surrender or transfer of that person to the International Criminal Court by the third country, absent the express consent of the Government of the Republic of Gabon.

4. When the Government of the Republic of Gabon extradites, surrenders, or otherwise transfers a person of the United States of America to a third country, the Government of the Republic of Gabon will not agree to the surrender or transfer of that person to the International Criminal Court by a third country, absent the express consent of the Government of the United States.

5. This Agreement shall remain in force until one year after the date on which one Party notifies the other of its intent to terminate this Agreement. The provisions of this Agreement shall continue to apply with respect to any act occurring, or any allegation arising, before the effective date of termination.

If the proposal set forth herein is acceptable to the Government of the Republic of Gabon, this note and the Ministry's affirmative note in reply shall constitute an agreement between the two Governments which shall enter into force on the date of the Ministry's note.

The Embassy of the United States of America avails itself of this opportunity to renew to the Ministry of Foreign Affairs and Cooperation of the Republic of Gabon the assurances of its highest consideration.

Embassy of the United States of America
Libreville, February 26, 2003.

MINISTERE DES AFFAIRES ETRANGERES
DE LA COOPERATION ET
DE LA FRANCOPHONIE

SECRETARIAT GENERAL

DIVISION DES TRAITES

N° 1127 /MAECF/SG/DT

REPUBLIQUE GABONAISE
Union-Travail-Tustice

Le Ministère des Affaires Etrangères, de la Coopération et de la Francophonie présente ses compliments à l'Ambassade des Etats-Unis d'Amérique près la République gabonaise et a l'honneur d'accuser réception de sa note verbale n° 17 du 26 février 2003, relative au projet d'Accord bilatéral sur la remise des personnes à la Cour pénale internationale entre la République gabonaise et les Etats-Unis d'Amérique.

A cet effet, le Ministère des Affaires Etrangères, de la Coopération et de la Francophonie, ayant en esprit le Statut de Rome portant création de la Cour pénale internationale, exprime son consentement à être lié par les dispositions proposées par l'Ambassade des Etats-Unis d'Amérique dont le contenu est le suivant :

1- Pour les besoins du présent Accord, le terme de « personnes » a trait aux fonctionnaires et employés gouvernementaux (y compris les sous-traitants), au personnel militaire ou aux ressortissants, présents ou passés, de l'une des Parties.

2- Les personnes relevant de l'une des Parties et qui sont présentes sur le territoire de l'autre Partie ne seront pas, sans le consentement exprès de la première Partie :

(a) être livrées ou transférées, de quelque manière que ce soit, à la Cour pénale internationale, quelle qu'en soit la raison,

(b) ni être livrées ou transférées, de quelque manière que ce soit, à toute autre entité ou pays tiers, ou expulsées vers un pays tiers, dans le but d'être livrées à, ou transférées vers la Cour pénale internationale.

.../...

3- Lorsque les Etats-Unis extradent, livrent ou autrement transferent à un pays tiers, une personne du Gabon, ils n'accepteront pas la livraison ou le transfert de cette personne à la Cour pénale internationale par ce pays tiers sans le consentement exprès du Gouvernement gabonais.

4- Lorsque le gouvernement de la République gabonaise extrade, livre ou autrement transfère à un pays tiers, une personne des Etats-Unis d'Amérique, ledit Gouvernement n'acceptera pas la livraison, ou le transfert de cette personne à la Cour pénale internationale par ce pays tiers sans le consentement exprès du Gouvernement des Etats-Unis.

5- Le présent Accord restera en vigueur une année pleine après la date à laquelle l'une des Parties notifie à l'autre son intention de le dénoncer. Les dispositions du présent Accord continueront à s'appliquer vis-à-vis de tout acte qui se produirait, ou de toute allégation qui serait soulevée avant la date effective de sa terminaison.

Le Ministère confirme à l'Ambassade des Etats-Unis que la présente note, ainsi que celle de l'Ambassade ci-dessus référencée, constituent un Accord bilatéral entre le gouvernement de la République gabonaise et le Gouvernement des Etats Unis d'Amérique qui entrera en vigueur à la date de la présente note.

Le Ministère des Affaires Etrangères, de la Coopération et de la Francophonie saisit cette occasion pour renouveler à l'Ambassade des Etats-Unis d'Amérique, l'assurance de sa haute considération.

Libreville, le 15 AVR. 2003

MINISTÈRE DES AFFAIRES ETRANGÈRES, DE LA COOPÉRATION ET DE LA FRANCOPHONIE
SECRÉTAIRE GÉNÉRAL ADJOINT
RÉPUBLIQUE GABONAISE
UNION · TRAVAIL · JUSTICE

AMBASSADE DES ETATS-UNIS
D'AMERIQUE

LIBREVILLE

UNOFFICIAL TRANSLATION

The Ministry of foreign Affairs, Cooperation and Francophony presents its compliments to the Embassy of the United States of America to the Republic of Gabon and has the honour to acknowledge receipt of its Verbal Note N°17 dated 26 th of February 2003, relating to the draft bilateral agreement on the surrender of persons to the International Criminal Court between Republic of Gabon and the United States of America.

Thus, the Ministry of foreign Affairs, Cooperation and Francophony, bearing in mind the Rome Statute on the establishment of the International Criminal Court, expresses its agreement to be bound by the following provisions suggested by the Embassy of the United States of America:

1.For purposes of this agreement, " persons" are current or former Government officials, employees (including contractors), or military personnel or nationals of one Party.

2. Persons of one Party present in the territory of the other shall not, absent the express consent of the first Party,

(a) be surrendered or transferred by any means to the International Criminal Court for any purpose, or

(b) be surrendered or transferred by any means to any other entity or third country, or expelled to a third country, for the purpose of surrender to or transfer to the International Criminal Court.

3. When the United States extradites, surrenders, or otherwise transfers a person of Gabon to a third country, the United States Will not agree to the surrender or transfer of that person to the International Criminal Court by the third country, absent the express consent of the Government of the Republic of Gabon.

4. When the Government of the Republic of Gabon extradites, surrenders, or otherwise transfers a person of the United States of America to a third country, the Government of the Republic of Gabon will not agree to the

surrender or transfer of that person to the International Criminal Court by a third country, absent the express consent of the Government of the United States.

5. This Agreement shall remain in force until one year after the date on which one Party notifies the other of its intent to terminate this agreement. The provisions of this Agreement shall continue to apply with respect to any act occurring, or any allegation arising, before the effective date of termination.

The Ministry confirms to the Embassy of the United States that this Note as well as that the Embassy refereed to above represent a bilateral agreement between the Government of the Republic of Gabon and the Government of the United States of America entering into force at the date of this Note.

Libreville

EMBASSY OF UNITED STATES
OF AMERICA

LIBREVILLE